THE RED MAN

An Illustrated Magazine Printed by Indians

MARCH-APRIL 1917

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A Language Clue to Indian Origins

Published Monthly by THE CARLISLE INDIAN PRESS

The Trophies of Miltiades

Being a Little Preachment to the Carlisle Students by the Superintendent.

IN reviewing Plutarch's life of Themistocles a few evenings ago, I was very much impressed with the story of this remarkable man's career. Plutarch tells us that he was of obscure birth, but that even as a boy he was unusually bright and intelligent. He was ambitious and possessed a passion for distinction. He was still a mere youth when the battle of Marathon was fought and won under the skillful leadership of Militiades. He doubtless had seen this great general return home laden with trophies of victory and received the pluadits of the people. The great battle of Marathon, about which everyone was talking, was constantly in his mind, and he longed to crown himself with glory as Miltiades had done by completely overcoming the great Persian army. He dreamed dreams and saw visions —visions of glory and success. So absorded was he in layng plans for his future greatness he could not sleep. The sports and recreations that had hitherto interested him greaty, ceased to occupy his thoughts or spare time. He became silent, reserved, and absent minded. When his friends questioned him as to the cause, he replied, "The trophies of Miltiades will not suffer me to sleep." And herein is the subject of my little preachment.

A trophy is a memorial of victory—success. It was not the intrinsic value of the trophies of Miltiades that inspired Themistocles and caused the fires of ambition to be kindled within his breast; nor was it their utility, for trophies are often quite useless in so far as their practical value is concerned. To Themistocles, these trophies spelled success. They were *emblems* of victory, not *rewards*. They reminded him that if he would succeed in life he must cease floating and swim. The floater never gets anywhere except by chance. He can neither keep off the shoals nor avoid the rocks of disaster. It takes a self-propeller to steer himself safely and surely into the harbor of success. Themistocles realized this and began to generate energy. We must get up steam and become self-propelling, if we expect to get anywhere. We must learn to do the right thing at the right time without being told.

O. H. LIPPS

A magazine issued in the interest of the Native American

The Red Man

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The Story of Jacataqua:

By Charles E. Waterman.

ON THE shores of the Kennebec River, in the town of Winslow and the State of Maine, there stands a small structure in a dilapidated condition. Because of its peculiar construction—the upper story jutting over the lower one—it attracts attention. It is the remaining block house of old Fort Halifax, built in 1755 to be used in English-Indian warfare. It was one of three forts built about this time on the same river, the other two being farther down stream, known as Forts Weston and Shirley, which have disappeared in the lapse of years. Around these forts, as might be expected, hang many stories and traditions. Most of them are sanquinary, but at this far-a-way day friend and foe have melted into a common mass of humanity, and one now listens to the tales with only kindness and sympathy.

Where these forts arose in the seventeenth century in the Maine woods was the meeting place of two systems—the English political and the French ecclesiastical. The first was bent on the extermination of the red man and the second on his assimilation. It was an upper and lower millstone between which the Indian fared hard, but of course he clung to the side which promised life. As a result the Indians adopted the religion the Jesuits brought them, received some secular instruction, and imbibed some French blood.

The land, however, was not large enough for both French and English, so they fought for supremacy, and in the course of years the English won and the Indians changed masters, but not all of them lost their French grace.

Not only do nations quarrel but families. The English quarreled among themselves. By and by Yankees rowed up the Kennebec, marched over the Height of Land and floated down the Chaudiere to old Quebec to fight the English, where once the English had

fought the French. In this expedition marched the hot young blood of the revolting colonies along the Atlantic seaboard—marched such men as Benedict Arnold, Aaron Burr, and Daniel Morgan. They were little more than youths and were ready for frolic as for war.

As the expedition reached Fort Weston at the head of sloop navigation, it paused to exchange sailing craft for batteaux, with which to pole over the rapids of the upper river. Guides, too, were wanted, and who should be better than the red men natives of the river. So it was a meeting place for both colors.

For some reason, now forgotten, an Indian girl, a Canabis princess named Jacataqua, was held a semi-prisoner in the home of the commandant of the fort. She possessed the supple charm of the Indian combined with the grace of the French, for blood of both people flowed in her veins. A French priest had taught her letters and her Indian father the pursuit and capture of wild animals. She knew something of convent life, but she loved the free existence of the forest. Very demure was she when she poured tea for the commandant, and like an Amazon when she shot venison for his dinner. The young bloods of the expedition, when they dined or supped with the commandant, looked upon her with admiration. Perhaps they had not expected such an apparition in an Indian and were somewhat in the position of the elder Baron St. Castin when he first saw his Indian daughter-in-law:

"For he had read in Jesuit book
Of these children of the wilderness,
And now he looked to see a painted savage stride
Into the room with shoulders bare,
And eagle feathers in her hair,
And around her a robe of panther's hide.
Instead, he beheld with secret shame
A form of beauty undefined,
A lovliness without a name,
Not of degree but more of kind,
Nor bold, nor shy, nor short nor tall,
But with a new meaning of them all.
Yes, beautiful beyond belief,
Transfigured and transfused
The daughter of an Indian chief."

There was one who looked upon Jacataqua longer than the others. He was young, he was handsome, he was winning; so win-

ning Benedict Arnold could not refuse his petition to accompany the expedition as an unattached private and an uncommissioned officer when impedimenta was not only undesired but studiously avoided. Moreover, he had just recovered from a fit of sickness, yet so winning was Aaron Burr that even the anxious commander of a wilderness expedition could not refuse him.

Although there coursed in his veins not only the blood of his reverend father, Aaron Burr, president of Princeton College, but also that of the great Puritan divine, Jonathan Edwards, nevertheless neither duty or morality weighed heavily upon him, nor, apparently, the fear of the Puritan theology. Possession by the shortest road from desire was his doctrine.

Burr wanted Jacataqua, so as the most direct means of possession he offered to buy her, but the commandant would not sell his prisoner. He need not have contemplated wasting his money, for he had other means more powerful. If men could not withstand his winsomeness, could women be expected to do so? He exerted this quality on Jacataqua and thereby added another world-wide love story to the stock already accumulated and scarcely less thrilling than that of Dante and Beatrice, Hero and Leander, or Hermann and Dorothea.

There are quite a number of facts to substantiate this love story, and where facts are wanting tradition has been busy. There is a tradition that in the corn fields about Fort Weston, at the time of the Arnold expedition, bears were making free with the milky ears, much to the disgust of the owners, and one proprietor offered Jacataqua a bounty on scalps of thieves brought in. She accepted his proposition, and shouldering her rifle started for the corn field. Burr thought she needed an escort and offered his services, and companionship began.

A bear and two cubs were the trophies of this hunt, and so pleased was the proprietor with the results and so curious, perhaps, concerning the love making of Burr and Jacataqua, that he gave a supper to them and their friends, seating them on either hand, where they toasted each other, he "To the Queen of the Kennebec," and she "To a Burr full of Chestnuts."

Shortly after this supper, the expedition manned its batteaux and headed toward the wilderness, and added to the unofficial soldier already mentioned was an Indian princess. For seventy-nine days they toiled through the forests of the District of Maine and the

Province of Quebec. Wet to the skin, they pushed their batteaux; mired to the waist, they waded through swamps; tired, they climbed mountains mid frosts and snows; and sick and starved, many of them lay down to die. So short did provisions become that dogs were killed for food and moccasins stewed for broth. It was a time of great suffering for all—all except Burr and Jacataqua. It mattered little to them that food was scarce, for they did not hunger; it mattered little to them that the way was long and rough, for they flew on the wings of love.

The storming of Quebec is an old, old story. Thousands of tourists each year look at its ancient walls and view the spot where Montgomery fell and his body carried out of bullet range by his aide, none other than young Burr. Disappointment was the only reward of that almost eighty-day war path up the Kennebec and down the Chaudiere to the Americans; but the reward sat lightly on the minds of the lovers. The great disappointment came to them when the Americans were forced to retreat, taking Burr with them, for he held a commission now, and leaving Jacataqua behind.

Her old life came in advantageously now. She sought a convent, and here in the months that followed was born to her a baby girl, which out of the memory of the past she named Chestnutiana.

After a while, Burr, stationed on Long Island with the Revolutionary Army, sent for his Indian princess and in the midst of a stately forest built for her and her child a cabin, where she lived many years and gradually passed out of the life of her old-time lover. The world called him, and straightway he went after his new mistress with all the directness of his old love. To him, however, she was a cruel mistress, albeit a just one. She smiled on him for a while, and then her features settled into an angry frown and she deserted him.

Years passed and Burr found himself an old man, alone and in poverty. No one care to minister to his wants and he groaned in spirit. One day a woman, not like the others, came to him and bathed his aching head. He looked at her inquiringly. She returned the look and said softly:

"Do you not remember you once had a daughter?"

O, the human heart! It is a garden in which grow the flowers of hope; also the weeds of memory! But waste no pity on it. At the end of its season shrouding snows will cover both.

Declaration of Policy in the Administration of Indian Affairs:

URING the past four years the efforts of the administration of Indian affairs have been largely concentrated on the following fundamental activities—the betterment of health conditions of Indians, the suppression of the liquor traffic among them, the improvement of their industrial conditions, the further development of vocational training in their schools, and the protection of the Indians' property. Rapid progress has been made along all these lines, and the work thus reorganized and revitalized will go on with increased energy. With these activities and accomplishments well under way, we are now ready to take the next step in our administrative program.

The time has come for discontinuing guardianship of all competent Indians and giving even closer attention to the incompetent that they may more speedily achieve competency.

Broadly speaking, a policy of greater liberalism will henceforth prevail in Indian administration to the end that every Indian, as soon as he has been determinnd to be as competent to transact his own business as the average white man, shall be given full control of his property and have all his lands and moneys turned over to him, after which he will no longer be a ward of the Government.

Pursuant to this policy, the following rules shall be observed:

1. *Patents in Fee*—To all able-bodied adult Indians of less than one-half Indian blood, there will be given as far as may be under the law full and complete control of all their property. Patents in fee shall be issued to all adult Indians of one-half or more Indian blood who may, after careful investigation, be found competent; provided, that where deemed advisable patents in fee shall be withheld for not to exceed 40 acres as a home.

Indian students, when they are twenty-one years of age, or over, who complete the full course of instruction in the Government schools, receive diplomas, and have demonstrated competency will be so declared.

2. *Sale of Lands*—A liberal ruling will be adopted in the matter of passing upon applications for the sale of inherited Indian lands where the applicants retain other lands and the proceeds are to be used to improve homesteads or for other equally good purposes. A more liberal ruling than has hitherto prevailed will hereafter be followed with regard to the applications of noncompetent Indians

for the sale of their lands where they are old and feeble and need the proceeds for their support.

3. *Certificates of Competency*—The rules which are made to apply in the granting of patents in fee and the sale of lands will be made equally applicable in the matter of issuing certificates of competency.

4. *Individual Indian Money*—Indians will be given unrestricted control of all their individual Indian moneys upon issuance of patents in fee or certificates of competency. Strict limitations will not be placed upon the use of funds of the old, the indigent, and the invalid.

5. *Pro Rata Shares—Trust Funds*—As speedily as possible their pro rata shares in tribal trust of other funds shall be paid to all Indians who have been declared competent, unless the legal status of such funds prevents. Where practicable the pro rata shares of incompetent Indians will be withdrawn from the Treasury and placed in bank sto their individual credit.

6. *Elimination of Ineligible Pupils from the Government Indian Schools*—In many of our boarding schools Indian children are being educated at Government expense whose parents are amply able to pay for their education and have public school facilities at or near their homes. Such children shall not hereafter be enrolled in Government Indian schools supported by gratuity appropriations, except on payment of actual per capita cost and transportation.

These rules are hereby made effective, and Indian Bureau administrative officers at Washington and in the field will be governed accordingly.

This is a new and far-reaching declaration of policy. It means the dawn of a new era in Indian administration. It means that the competent Indian will no longer be treated as half ward and half citizen. It means reduced appropriations by the Government and more self-respect and independence for the Indian. It means the ultimate absorption of the Indian race into the body politic of the Nation. It means, in short, the beginning of the end of the Indian problem.

In carrying out this policy, I cherish the hope that all real friends of the Indian race will lend their aid and hearty cooperation.

CATO SELLS, *Commissioner.*

Washington, April 17, 1917.

Approved:

FRANKLIN K. LANE, *Secretary of the Interior.*

General Pratt Dissents to Separate Indian Organizations for the Army.

ONE of the Indian school papers gives a proposition by Mr. Ayer, a member of the Board of Indian Commissioners, to raise regiments of Indian soldiers. Allow me to dissent from Mr. Ayer's method.

In the nineties, under the Secretary of War Proctor, a scheme to have a company of Indian soldiers in a number of our regular regiments was inaugurated. Some of us opposed, giving as our reasons that it was not recognizing the manhood and ability of the Indians and was continuing to make him an exception in the American family. That it was creating Indian reservations in each regiment where such Indian company was incorporated. That it was a continuation of the segregating Indian system. There were other patent reasons, but these are sufficient. These companies were disbanded within two years and the system pronounced a failure. I had previously urged the adjutant general to take Indians into army service as individual men and put no two Indians in the same company. After this failure my suggestion was accepted and my influence used and fifty were enlisted. There were no failures. Severa of them distinguished themselves in the Philippine and China wars One, an Osage, did so well in the Ninth Infantry that he was advanced to first sergeant in his company. Twice during his enlistment he had special mention for gallantry. Another was one of the bodyguard of General Lawton when he was killed and who shot out of a tree the Filipino who had killed his general.

The Indians should furnish their full quota of our national defenders but should be taken into regular companies as individual men and never as purely Indian organizations. This would wipe out, instead of strengthening, racial prejudice. It would also make real soldiers out of the Indians and abolish exploitation of the race, which is one of the evils they have been subject to all the years.

Segregating, reservating, has been the bane of Indian management from the beginning and will continue to be so long as it prevails. Those who assume to advise as to what should be done with the Indians need larger vision.

By all means let us have a full proportion of Indians in the army,

but no special Indian organizations. If practicable it would be better that no two Indians be placed in the same company.

Instead of keeping them near their reservations, as Mr. Ayer recommends and as was provided in the Indian companies in the nineties, they should be sent away from home and treated in all respects the same as all other men in the army. Even three or four Indians in one company would be an Indian reservation in that company.

I belonged to a colored regiment for more than thirty years—the Tenth United States Cavalry. It was against the best interests of the negro that he was put in the army as a separate organization, and yet the negroes should furnish their full quota of national defenders. The creation of four regiments of negroes in the regular army was a tremendous prejudice builder and a clear violation of the constitutional amendment which provides that there shall be no distinction on account of race, color, or previous condition of servitude. Indian regiments would be equally unconstitutional and equally prejudice builders.

If the army is increased to half a million men the Indians' proportion would be less than 1,700. That number of most efficient Indians can easily be found and enlisted in a month, and I know there is hearty welcome for them in the regular companies.

Do what you can to prevent the accomplishment of Indian organizations in the army, but do all you can to have the Indians furnish their full proportion of men required for our national defense.

R. H. PRATT.

1616 La Vereda Street,
Berkeley, Cal.
March 26, 1917.

The Captive; An Indian Play for School Performance:

By Lady Margaret Hall, Oxford, England.

Actors required: Three girls, one boy.

Dresses: Pueblo Indian costume. For women, a white calico waist and petticoat in one (a night dress will do very well), and over this a black blanket wrapped around the person, passing under the left arm and fastened on the right shoulder. A wide red belt passed two or three times around the waist. White moccasins, coral and other beads, silver bracelets, and rings. For the man, fringed leggins, a hunting-shirt, moccasins, war-bonnet with feathers, shield, spear, bow and arrows. All these can be copied from the illustrations in the Annual Reports of the Bureau of American Ethnology, Vol. XXIII, plates 93, 94; Vol. XIV, Part I, plates 61 to 81; Vol. VIII, plates 85 and 86; to be seen in any public library or in "First Families of the Southwest," published by the Santa Fe Railway Company, or best of all, see the life-sized model groups in the National Museum, Washington; Field Museum, Chicago; American Museum of Natural History, New York City.

Furniture: Floor covered with canvas and sanded to represent earthen floor of Indian house. Navajo blankets rolled up for bedding. Indian pottery, especially a large water-jar and a bowl for kneading dough. Sheep skins; ears of corn; a little corn-meal; a jar of paint; flat cakes; an Indian basket.

Story of the Play.

The place is an Indian village in New Mexico; the time, 60 years ago. An Indian woman is sitting in her house, mixing bread. With her is her little daughter, Snow Basket. The woman's husband is not at home; he has gone with a war-party to fight the Navajo Indians. She hopes

that he will come back to-day, bringing Navajo scalps with him. She longs for revenge on the Navajos, who carried away her elder child many years ago.

At the beginning of the play, the little girl is asking her mother about this lost child.

The Captive.

Snow Basket: But, what was her *name*, mother?

Mother: Whose name, child? (She goes on mixing dough.)

Snow Basket: Why, my elder sister's. The one that the Navajos stole away.

Mother: "Hush, child." I don't like to say her name. Maybe she is dead.

Snow Basket: O, please, mother!

Mother: Well, we called her Blue Cloud. She was born in the early spring, and you came in the winter, so we called you Snow Basket. She was such a pretty child; so fat, and she had *red* cheeks! Her father made her a little dress, and I tied a medal around her neck; like yours. (Handling the medal on Snow Baskets neck, so that the spectators see it well.) And she could talk so nicely, she knew the name of everything.

Snow Basket: How old was she, then?

Mother: (Counting on her fingers.) Four years old, and you were a baby; you could not walk yet, I was carrying you in my blanket. I went up the valley to fetch our peaches, and she was toddling after me; and there were two Navajo men hiding in the corn field.

Snow Basket: O, mother, what could you do?

Mother: I picked her up under my arm and started to run, and I couldn't run fast with the two of you, and the Navajo man came after me laughing, and knocked me down. And then he picked up your sister and ran to his horse, and both the men rode away. (She wipes her eyes, and goes on kneading the dough.)

Snow Basket: (after a pause.) But what do the Navajos *do* with little girls, mother?

Mother: What do they *do* with them, child? Why, they take them to their home and make them into Navajos!

Snow Basket: Make them into Navajos?

Mother: Yes, child. They give them a medicine to make them forget their own people, and so they grow up with Navajo hearts. At least, that's what people say. (She begins to pat the dough into round flat cakes. Snow Basket takes an ear of corn, wraps it in her shawl and carries it about like a baby.)

Snow Basket (talking to her doll): Hush, baby, hush! The Navajo man shan't get you.

Snow Basket: (talking to her doll) Hush, baby, hush! The Navajo man shan't get you. Mother!

Mother: Yes, child.

Snow Basket: Don't cry, mother. Father has gone to fight the Navajos; and maybe he'll kill a Navajo man; and then you'll get happy, won't you?

(The mother does not answer.)

Snow Basket: Will my father come home to-day?

Mother: You must throw cornmeal for him and bring him home. You know the way. Take the dish of white cornmeal. The little dish. That's it. Hold it in your left hand. Now say, "my father will kill a Navajo man."

Snow Basket: (following her directions.) "My father will kill a Navajo man.

Mother: He will bring home a scalp.

Snow Basket: "He will bring home a scalp.

Mother: And we shall all dance.

(The drum beats again in the distance.)

Father: Goodbye for four days!

(He goes away, and is heard shouting at a distance—
Yah ay vay vay tchah.)

Snow Basket: O how nice! We shall dance for my father. Like this. (She fetches a coloured shawl and ties it around her.) O, paint my face, mother! O, paint my face, mother!

Mother: (smiling.) Here. (She dips her fingers into a pot of vermillion paint and draws lines on the little girl's cheeks.)

Snow Basket: (looks about the house and finds two sticks.) These are my arrows!

(She dances. The mother watches her, smiling.)

(Snow Basket stops dancing and looks at the Navajo girl.)

Snow Basket: And father has brought us a Navajo girl. O, what a pretty blanket! (She goes to the girl and strokes her blanket.)

Snow Basket: Father!

Mother: Thanks! you have come.

Father: Yes, I have come.

Mother: (going to him.) Come in, my husband.

Father: (motioning her not to touch him.) No, I can't come in. I have killed a Navajo man, and I must go to the chief's house. Four days from now we shall dance around the scalp.

Mother: Thanks! you have killed a Navajo. Yes, we shall all dance for you!

(The father takes hold of a girl who has been standing behind him, and pushes her into the house.)

Father: Here is a Navajo captive for you. I caught her just after the fight.

(The Navajo girl sits down, hiding her face in the blanket which she wears over her head and shoulders.)

Snow Basket: "And we shall all dance."

Mother: Now throw cornmeal in the air.

(Snow Basket takes a pinch of cornmeal and flicks it in the air.)

Mother: That's all.

(She goes on making cakes. Snow Basket takes up the doll again.)

(A drum is heard in the distance. Both start and look up. Men's voices are heard singing—

Yah ay vay vay tchah
Yah ay vay vay tchah.

The father comes to the doorway. He is dressed in his war dress, with bow and arrows. He leans against the door post.)

Snow Basket: O, the *pretty* beads!

(She pulls at the necklace. The Navajo girl hastily takes it off and hands it to her.)

Snow Basket: Thank you! She gave me her beads! Why don't you look at her, mother?

Mother: It hurts me—here (touching her breast)—to look at her. It makes me think of *my* little girl who was stolen away. Maybe this little girl's mother is crying for her.

Snow Basket: Poor little girl. And *she* is crying. Maybe she understands what you say.

Mother: No, she doesn't understand. But I suppose she's hungry.

Snow Basket: May I feed her?

Mother: Yes, you can feed her.

(Snow Basket fetches bread on a flat basket and sets it before the girl, who breaks off pieces with one hand and eats them under cover of her blanket. Snow Basket stands watching her until she stops eating.)

Snow Basket: Have you eaten enough?

(The girl nods her head.)

Mother: Bring her a drink of water. She's scared to go to the water pot.

(Snow Basket dips a cup into the pot and brings it to the girl.)

Snow Basket: Another?

(The girl shakes her head.)

Mother: Put away the bread, child.

(Snow Basket puts it away.)

Snow Basket: O how nice. Now I shall have a sister to play with me. She will stay with us, always, won't she, mother?

Mother: No! no! I won't have her here. I could not bear to see a Navajo girl in the house. It would always make me think of my poor Blue Cloud, whom the Navajos stole away. And this one looks just the same age. I couldn't bear it. No, we'll sell her to the Mexicans across the river. They will give us a pony for her, or maybe a gun.

Snow Basket (half crying): O, don't send her away! Don't sell her to the Mexicans for a slave. Look, she has lost her own mother, and I think she wants *you* to be her mother. I think she wants me to be her sister.

(The mother sits for a while with her face hidden.)

Mother: The Mexicans are bad. We'll keep her, poor thing. You shall have her for a sister. Fetch the soapweed, and we'll wash her and give her a new name, to make her seem like one of us.

Snow Basket: O thank you, thank you. (She runs out and comes back with a piece of soapweed-root.)

Mother: Not that piece. The other piece that was soaking.

(Snow Basket fetches a wet piece.)

Mother: Go outside and bruise it.

(Snow Basket goes out, pounds the soapweed with a stone, and brings it back.)

Mother: Give it here. (She lays the soap weed in a dish.) Bring me some water.

(Snow Basket pours two cupfuls of water over the weed; the mother rubs it into lather. She gives the dish of suds to Snow Basket. who sits it down beside the crouching Navajo girl.)

(The mother fetches an ear of corn on a basket and the dish of cornmeal.)

Snow Basket (very much excited): What will we call her? O, what will we call her?

Mother: You shall choose.

Snow Basket: Then I'll call her *Blue Cloud.* Because I want her to be my own sister.

Mother: No, no! not that! . . . But yes, if you like. Poor child! Now, I'll wash her first, and then you can rub the cornmeal on her face and give her the name.

(She gives the dish of cornmeal and the ear of corn to Snow Basket to hold, kneels down in front of the Navajo girl and dips her hand in the suds. With her other hand she pulls the blanket off the girl's head, and suddenly she sees the medal on a string around her neck.)

Mother (pulling out the medal): The medal! the medal! O Blue Cloud, my little girl!

Blue Cloud: Mother!

A Language Clue to Indian Origins:

By J. P. Dunn, Secretary Indiana Historical Society.

WHO were the Mound Builders? Outside of problems whose solution offers some promise of material benefit there is no challenge to human reason that commands greater attention than the persistent call of prehistoric ages, "Riddle me my riddle." Why is the geologist interested in that mass of rock? The sufficient answer is—

> "In that rock are shapes of shells, and forms
> Of creatures in old worlds, of nameless worms
> Whose generations lived and died ere man,
> A worm of other class, to crawl began."

And after man began to crawl the interest increases, for then were beings who knew grief and joy, who loved and hated, who met the problems of existence that are peculiar to man in animal life. We see him "from nature rising slow to art," and are fascinated by speculation, on the means by which he attained social organization, law, and other accompaniments of human existence.

Who were these men who once peopled this land of ours, and who left their record of curious earth works—occasional stone works—and still more extensive records in the thousands of arrow heads, stone axes, and other artifacts that are found scattered everywhere? The trend of scientific opinion today is to the belief that they were the ancestors of our Indians of historic times; but there are some who believe that they were of another race, and were driven from their original homes by the ancestors of the Indians. In either event, who were the Indians, and whence did they come?

In the consideration of these questions attention has been given chiefly to physical evidences. Mounds have been examined extensively and carefully. Implements have been studied with assiduity. Crania have been measured and compared in large numbers. The result of these investigations have thrown no satisfactory light on the question of identity. That still remains a subject of theory and speculation, and with comparatively slight grounds on which deductions may be based.

There remains one field of evidence that has not been so fully explored, and that is language. Presumably if there are any descendants of the Mound Builders surviving, their language survives; and although there is no known tradition of Mound Builder ancestors among our Indian tribes, the language if it survives would presumably retain some indication of this earlier status. Anglo-Saxon has passed out of existence as

a spoken language, but Anglo-Saxon grammar is living in the English language. Feudalism is a thing of the past, but we retain many terms of feudal origin.

Mr. Brinton was probably justified in his statement that, "The Algonkins may be taken as typical specimens of the American race," and of the Algonkin tribes none has a more complete and elaborate grammatical system than the Miamis, whose language is the same as that of the Peorias, or Illinois, excepting a slight dialect distinction. The most important grammatical characteristics of this language may be illustrated by two brief sentences:

Nă-wa′-ka wa-pĭ′-sĭ-ta lăm-wa. *I see a white dog.*

Nă-ma′-nĭ wa-pĭ′-kĭ sa′-nĭ. *I see a white stone.*

It will be noticed that each of these words ends with a vowel; and every word in the Miami language, when fully and properly pronounced, ends with a vowel sound. These vowels are either verbal inflections, or parts of verbal inflections, in all nouns, verbs, pronouns and adjectives. The controlling words in the two sentences are lăm′-wa (*a dog,*) and să′-nĭ (*a stone*). The final "a" of lăm′-wa indicates that it is animate. The final "i" of să′-nĭ indicates that it is inanimate. This destinction between the animate and the inanimate is the basic grammatical distinction of the Miami language, and of most of the languages of North and South America.

For convenience the quality may be called sentience, to coordinate it with number, gender, and case; for the animates include only things that have, or are supposed to have, sentient life. Things of the vegetable world are not animates, unless personified on account of supposed animate or supernatural—perhaps more accurately super-vegetable—qualities.

This quality of the object controls the form of the verb. Nă-ma′-ka, of itself, means "I see him (or her—something animate)." Nă-ma′-nĭ, of itself, means "I see it (something inanimate)." This illustrates the second important characteristic of the language. A Miami verb is not transitive unless the action actually passes from the subject to some other person or thing, and, when transitive, indicates the sentience, and usually the person and number of the object. Such verbs as "I say" and "I think" are not transitive, even when the thing said or thought is expressed, because from the Indian point of view there is no transition of the action to another person or thing. But "I say to you," or "I tell you," are transitive in form and in meaning.

This quality of the noun also controls the form of the adjective. Wa pĭ′-sĭ-ta, of itself, means "he (or she—something animate) is white." Wa-pi′-kĭ, of itself, means "it (something inanimate) is white." But these adjective endings are regular verb endings; and in the Miami language the adjective is a verb, conjugated as other verbs. It has no

other independent form. If I wish to say "I am white," I cannot use either of these forms, but must say wa-pĭ'-sĭ-a'-nĭ. As to pronunciation, all of the consonants and marked vowels in these words have their usual English force, and all of the unmarked vowels have their usual continental force.

Of these three characteristics, that of the basic distinction of sentience is the most significant, for, so far as I have been able to ascertain, no language of Europe, Asia, or Africa has this characteristic. In the inflected languages of the old world the basic grammatical distinction is that of sex. The familiar hic, haec, hoc, and meus, mea, meum, of the Latin are illustrations of this common characteristic of the Aryan, the Semitic, and other languages. Moreover, this sex distinction is one to which the minds of these people turned from the earliest known times. Whether you consider the book of Genesis revelation or tradition, there is no question of its antiquity; and in it, and the succeeding books of the Old Testament, from "male and female created he them" on to the end, in varying forms—male and female they went into the ark, and the command to increase and multiply; the reproach of childlessness, and kindred thoughts—the sex idea is preeminent. Indeed, one of the wonders of the world is that from the Hebrews, whose religion and literature were so saturated with the sex idea, should have come the conceptions of a sexless Trinity, a sexless heaven, and a virgin birth.

Under the canons of ethnologic science, it is impossible that a language with such a basic distinction of sex should evolve into a language with such a basic distinction of sentience; and this will readily be accepted by any person who reflects on the obstacles to such a change in a language handed down from father to son, learned by rote in infancy. From numerous statements of this rule the following by Prof. A. H. Keane will suffice for present purposes:

"There is no such phenomenon as linguistic miscegenation, no change of inner structure by any amount of contact, but only word borrowing, and the words so borrowed have all to conform to the genius of the languages into which they are accepted. There are many mixed races; indeed as seen, all races are mixed; but there are no mixed languages; that is, mixed in the sense here explained. English, if any, might be called a mixed language; but its grammar is purely Teutonic, and while it has embodied thousands of Latin and French words, it has not embodied a single Latin or French form."

And although Prof. Keane is an emphatic evolutionist as to language he quotes the following from Waitz with approval:

"Never has the grammatical structure of a language accommodated itself to a new one, but rather the whole language has disappeared, and had been supplanted by the new one; for such a change in the structure

of a language would presuppose a transformation of ideas, and the mode of connecting the elements of thought, which we deem next to impossible."

From these premises, if they be well founded, but one conclusion is possible, and that is an independent origin of language, and presumably an independent origin of man, on this continent. But this characteristic is not found in all American languages. Albert Gallatin, to whom the world is indebted for the first systematic effort at the analysis and classification of Indian languages, was attracted to the subject, and investigated it as far as possible at the time. In his "Synopsis of the Indian Tribes," published in this country in 1836, he said, after referring to minor distinctions of sex:

"A much more prevailing distinction is that between animate beings and inanimate things. It is not, however, universal, since it does not exist in the Eskimau, the Choctaw, the Muskoghee, and the Caddo, and has not been discovered in any other of our Indian languages than the Iroquois, the Cherokee, and the Algonkin-Lenape. But it is in the languages of the Algonkin-Lenape family that the distinction is most remarkable, and may be considered as one of its specific characteristics."

In later studies Mr. Gallatin found the existence of this distinction still more extensive, and in 1845, speaking of the languages of Mexico and Central America, said: "The distinction between inanimate things and animated beings, sometimes between rational and irrational beings, is found in all the languages." But Mr. Gallatin still attached less importance to this characteristic than he did to word differences; and he always felt obliged to reconcile his theories with Bible chronology, and with the Bible account of the creation of man, which involves a dispersion of races after the deluge, from some points in Asia. Accordingly, in this same article, in 1845, he says:

" I beg leave once more to repeat that unless we suppose that which we have no right to do, a second miraculous interposition of Providence in America, the prodigious number of American languages, totally dissimilar in their vocabularies, demonstrates not only that the first peopling of America took place at the earliest date which we are permitted to assume; but also that the great mass of Indian nations are the descendants of the first emigrants; since we must otherwise suppose that America was peopled by one hundred different tribes, speaking languages totally dissimilar in their words."

Later researches have demonstrated a widespread occurrence of this grammatical distinction of sentience in American language; and aside from the Eskimos, who are the one race common to both the old and the new worlds, the most notable lack of it is in the Muscogean languages. The Choctaw is almost destitute of grammatical inflections of any kind, even number in nouns being shown by adjunct words. For this reason

alone, on the principle above stated, a distinct origin must be ascribed to their language; and it can hardly be considered a mere coincidence that these same Muscogean tribes are the only ones who are known to have built mounds, within historic times, that are at all comparable to those of the Mound Builders. Chiefly on account of their structural and artistic products, Mr. Brinton forcibly urged that they were the decendants of the Mound Builders. Speaking of the records of the travels of De Soto, Mr. Brinton says: "He found them cultivating extensive fields of maize, beans, squashes and tobacco; dwelling in permanent towns with well-constructed wooden edifices, many of which were situated on high mounds of artificial construction, and using for weapons and utensils stone implements of great beauty of workmanship. The descriptions of later travelers and the antiquities still existing prove that these accounts were not exaggerated. The early Muskokis were in the highest culture of the stone age; nor were they wholly deficient in metals. They obtained gold from the auriferous sands of the Nacoochee and other streams, and many beautiful specimens of their ornaments in it are still to be seen. Their artistic development was strikingly similar to that of the 'mound-builders' who have left such interesting remains in the Ohio valley; and there is, to say the least, a strong probability that they are the descendants of the constructors of those ancient works, driven to the south by the irruptions of the wild tribes of the north."

It is within the limits of possibility that a full study of our Indian languages may throw valuable additional light on these interesting subjects; and surely it is to be regretted that there is not now within reach of students the material for such research. During the past century every American ethnologist of note has urged the record and publication of these languages; and yet there are important languages now rapidly passing out of existence on account of the Americanizing of the rising generation, which will be entirely lost unless steps for their preservation are speedily taken. There are in existence in this country and in foreign countries dozens of manuscript records of some of these languages, made by the early missionaries, which are not accessible without much difficulty and expense.

Furthermore, all American ethnologist are agreed that vast benefits to linguistic science may be attained by full investigation of these languages. James Hammond Trumbull declared: "I do not hesitate to express my belief that through the study of the American languages scholars may as nearly arrive at a solution of the great problem of the genesis of speech, in determining the character and office of its germs, as by any other avenue of approach." If any friend of knowledge should desire to erect a monument more enduring than brass, he could not find a more certain mode than founding a society for the prosecution of this work, with sufficient endowment to ensure its success.

IN THE SUPREME COURT OF THE UNITED STATES.

No. 449.—October Term, 1915.

Franklin K. Lane, Secretary of the Interior, Plaintiff in Error, *vs.* The United States of America ex relatione Julia Lamere Mickadiet, nee Tiebault, and Alma Lamere Tiebault.	In Error to Court of Appeals of the District of Columbia.

(May 22, 1916.)

Mr. CHIEF JUSTICE WHITE delivered the opinion of the Court.

The relators, who are defendants in error, invoked the aid of the trial court to control by mandamus the action of the Secretary of the Interior concerning an allotment in severalty of land made to an Indian in pursuance of the authority conferred by the act of February 8, 1887 (chap. 114, Stat. 388), entitled "An Act to provide for the allotment of lands in severalty to Indians on the various reservations." Under the facts stated in his return to the alternative rule, the Secretary asserting that the land embraced by the allotment in question was held in trust by the United States for the benefit of the allottee and that the official action sought to be prohibited was not subject to judicial control because it was one of exclusive administrative authority, denied that there was a right to grant the relief prayed. The return was demurred to as stating no ground for withholding the relief. The trial court overruled the demurrer and discharged the rule but the court below reversed and, holding that the Secretary had no power to take the action which it was alleged he intended to take concerning the allotment in question, awarded the mandamus prayed (43 App. D. C. 414), and the correctness of this ruling is the question now to be decided.

The facts are these: Tiebault was a Winnebago Indian living on the tribal reservation in Nebraska and in August, 1887, received an allotment in severalty of the tribal land by which he was entitled made in virture of the act of 1887. That act after conferring authority upon the Secretary of the Interior to make allotments of tribal lands as therein specified, directed that official to issue to the allottees patents, which "shall be of legal effect, and declare that the United States does and will hold the lands thus allotted for the period of twenty-five years in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or in case of his decease, to his heirs according to the laws of the State or Territory

where such land is located, and that at the expiration of such period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or encumbrance whatsoever: *Provided*, That the President of the United States may in any case in his discretion extend the period." (Section 5.)

About ten years after the allotment Tiebault, having continued to reside on the land and to enjoy the same conformably to the statute, began proceedings in the court of Thurston County, Nebraska, for the adoption as his children of the two relators, who were also Winnebago Indians, and a decree of adoption as prayed was entered. When ten years after the adoption Tiebault died without surviving issue, the adopted children, asserting rights as his sole heirs, sought the possession of the land embraced by the allotment and of some other land which had also been covered by an allotment made to a daughter of Tiebault, who died before him without issue and which land he had therefore inherited. This claim of heirship was disputed by nephews and nieces of Tiebault claiming to be his next of kin. The result was the commencement of proceedings in the District Court of the United States for the District of Nebraska on the part of the adopted children to obtain a recognition of their right of heirship, the nephews and nieces being among the parties defendant. Considerable testimony was taken, but no decree was entered because by the act of May 8, 1906 (chap. 2348, 34 Stat. 182) and the act of June 25, 1910 (chap. 431, section 1, 36 Stat. 855) it resulted that the district court was without power to proceed further, exclusive jurisdiction over the subject having been conferred by the acts in question upon the Secretary of the Interior. The pertinent provisions of the act last referred to are in the margin.*

The theatre of the controversy was therefore by the assent of the parties and of the United States transferred to the Interior Department where testimony was begun before an examiner, and the Secretary of the Interior, in June, 1913, entered an order in favor of the adopted children, holding them to be the lawful heirs of Tiebault and entitled under the statute to the ownership and enjoyment of the allotted lands.

The Secretary having been given authority both by the sixth section of the act of 1906 and by the provisions of the act of 1910, which we have quoted to reduce the twenty-five year period, the recognized heirs applied for an order terminating the trust period and for the

issue to them of a fee simple patent. This application was opposed by the next of kin who had been parties to the previous proceeding as to heirship, and they also asked to be permitted to re-open the controversy as to the validity of the adoption and the heirship resulting from it on the ground that as the result of newly discovered evidence they desired to show that the Nebraska decree of adoption and the previous administrative order had been obtained by fraud.

Under this request it would seem that considerable testimony was taken, but it was never acted upon because the recognized heirs, the relators, disputed the authority of the Secretary to re-open the controversy on the ground that the previous departmental order recognizing them as heirs was not subject to be re-opened or reviewed and in any event that the decree of adoption of the Nebraska court was beyond the competency of the Secretary to review or set aside even upon the charges of fraud which were made. Without passing upon the merits involved in the claim to re-open, or expressing any opinion concerning the conclusiveness of the Nebraska decree, the Secretary granted the application to re-open and ordered the issues thereon to stand for future consideration. Thereupon the petiton for mandamus was filed, to which a return was made alleging the facts to be as we have stated them, resulting in the judgment of the court below awarding the mandamus which is before us for review.

It is undoubted that the fee simple title to the land embraced by the allotment had not passed from the United States and that, as expressly stated in the granting act, the land was held in trust by the United States for the benefit of the allottees to await the expiration of the trust period fixed by law when the duty on the part of the United States of conveying the fee of the land would arise. It is equally undoubted under these conditions that the land was under the control in an administrative sense of the Land Department for the purpose of carrying out the act of Congress. As there is no dispute, and could be none, concerning the general rule that the courts have no power to interfere with the performance by the Land Department of the administrative duties devolving upon it, however much they may when the functions of that Department are at an end, correct as between proper parties, errors of law committed in the administration of the land laws by the Department, it must follow unless it be that this case by some exception is taken out of the general rule that there was no power in the court below to control

the action of the Secretary of the Interior and reversal therefore must follow. United States *v.* Schurz, 102 U. S. 378, 396; Brown *v.* Hitchcock, 173 U. S. 473; Knight *v.* Lane, 228 U. S. 6. But as the court below rested its conclusion of power solely upon the existence of an assumed exception to the general rule, and as the correctness of that view is the sole ground relied upon to sustain the judgment, that question is the single subject for consideration and we come to dispose of it.

The exception rests upon two considerations: (*a*) want of power of the Secretary to re-open or reconsider the prior administrative order recognizing the relators as the heirs of the deceased allottee, an absence of authority which it is deemed resulted from the provisions of the act of 1910 which we have previously quoted in the margin; and (*b*) the further absence of all authority of the Secretary to disregard the decree of adoption of the Nebraska court by collaterally questioning the same in order to deprive of the status of adoption which that decree it is insisted had conclusively fixed as against all the world under the law of Nebraska.

(*a*) The first proceeds upon the theory that the provision of the act of 1910 to the effect that the decision of the Secretary recognizing the heirs of a deceased allottee "shall be final and conclusive" caused the prior order of the Secretary recognizing the relators as heirs to completely exhaust his power and thereforeto give a character of absolute finality to such order even although the property to which it related was yet in the administrative control of the Department because of the trust imposed by the law of the United States until the expiration of the statutory period. But we are of opinion that this is a mistaken view. The words "final and conclusive" describing the power given to the Secretary must be taken as conferring and not as limiting or destroying that authority. In other words, they must be treated as absolutely excluding the right to review in the courts, as had hitherto been the case under the act of 1887, the question of fact as to who were the heirs of an allottee, thereby causing that question to become one within the final and conclusive competency of the administrative authority.

As it is obvious that the right to review on proper changes of newly discovered evidence or fraud a previous administrative order while the property to which it related was under administrative control, was of the very essence of administrative authority (Michigan Land & Lumber Company *v.* Rust, 168 U. S. 589), it must fol-

low that the construction upheld would not only deprive the Secretary of the final and conclusive authority which the statute in its context contemplated he should have, but would indeed render the administrative power conferred wholly inadequate for the purpose intended by the statute. And it must be further apparent that the inadequacy of authority which the proposition if accepted would bring about could not be supplied, since it would come to pass that although the property was yet in the control of the United States to carry out the trust, there would be an absence of all power both in the administrative and judicial tribunals to correct an order once rendered, however complete might be the proof of the fraud which had procured it.

But it is said that the purpose of the statute was to give the recognized heir a status which would entitle him to enjoy the allotted land and not to leave all his rights of enjoyment open to changing decisions which might be made during the long period of the trust term and thus virtually destroy the right of property in favor of the heir which it was the obvious purpose of the statute to protect. But in the last analysis this is a mere argument seeking to destroy a lawful power by the suggestion of a possible abuse. We say this because although it be conceded for the sake of the argument only that an exercise of power which was plainly an abuse of discretion depriving of the right which the statute plainly gave would be subject to correction by the courts, such concession would be here without influence since there is no basis whatever upon which to rest an assumption of abuse of discretion.

(*b*) So far as the Nebraska decree is concerned the mistake upon which the proposition proceeds is obvious since, conceding the premise upon which it must rest to be well founded, it affords no ground for preventing by judicial action the exercise by the Secretary of his power to determine the legal heirs and in doing so to ascertain the existence of the Nebraska judgment, the jurisdiction ratione materiae of the court by which it was rendered and the legal effect which it was entitled to receive under the law of Nebraska.

There was a suggestion in argument, which it conceded was not made in the courts below, of an absolute want of jurisdiction upon the theory that as the title of the allotted property was yet in the United States for the purposes of the trust, there could in any event be no jurisdiction over the cause, since in substance and effect it was a suit against the United States. As, however, the considerations involved

in this proposition were absolutely coincident with those required to be taken into view in order to determine the power of the Secretary, we have not deemed it necessary to specially consider the subject.

It follows from what we have said that the court below was without jurisdiction to control the conduct of the Secretary concerning a matter within the administrative authority of that officer and therefore that the mandamus was wrongfully allowed and the judgment awarding it must be and it is reversed and the case remanded with directions to affirm the judgment of the Supreme Court of the District of Columbia dismissing the petition for a writ of mandamus.

Reversed.

Mr. Justice McReynolds took no part in the consideration and decision of this case.

A true copy.

Test: *Clerk Supreme Court, U. S.*

* "That when any Indian to whom allotment of land has been made, or may hereafter be made, dies before the expiration of the trust period and before the issuance of a fee simple patent, without having made a will disposing of said allotment as hereinafter provided, the Secretary of the Interior, upon notice and hearing, under such rules as he may prescribe, shall ascertain the legal heirs of such decedent, and his decision thereon shall be final and conclusive. If the Secretary of the Interior decides the heir or heirs of such decedent competent to manage their own affairs, he shall issue to such heir or heirs a patent in fee for the allotment of such decendent; if he shall decide one or more of the heirs to be incompetent, he may in his discretion, cause such lands to be sold: *Provided*, That if the Secretary of the Interior shall find that the lands of the decedent are capable of partition to the advantage of the heirs, he may cause the shares of such as are competent upon their petition, to be set aside and patents in fee to be issued to them therefor."

IN THE SUPREME COURT OF THE UNITED STATES.

No. 86.—October Term, 1915.

The United States *vs.* Louis Hemmer, William W. Fletcher, J. E. Peart, et. al. } Appeal from the United States Circuit Court of Appeals for the Eighth Circuit.

(June 5, 1916.)

Mr. JUSTICE MCKENNA delivered the opinion of the court.

This suit was brought in the Circuit Court of the United States, Eighth Judicial Circuit, District of South Dakota, Southern Division, by the United States to remove clouds from the title to certain described lands and to cancel certain instruments purporting to convey the lands and praying that a certain judgment against the lands be declared no lien thereon, the ground of suit being that the conveyances and the judgment were obtained in opposition to the restrictions upon the alienation or encumbrance of the lands imposed by Congress.

After issue joined and hearing had the District Court, successor of the Circuit Court, entered a decree in accordance with the prayer of the bill. (195 Fed. 790.) The decree was reversed by the Circuit Court of Appeals and the case remanded to the District Court with directionsto dismiss the bill. (204 Fed. 898.) This appeal was then prosecuted.

The facts are the following: One Henry H. Taylor, known and designated sometimes as Henry Taylor, is and was during the times with which the suit is concerned a Sioux Indian of the full blood, belonging to and a member of the Santee Sioux Band of Indians and is not a member of and has never had connection with the Winnebago Band of Indians.

On October 7, 1878, Taylor entered upon the lands as a homestead, they being part of the public domain and subject to entry under the homestead laws of the United States then in force. He established and continued his residence and made satisfactory proof of all facts required by law.

On June 6, 1890, a patent was issued to him which recited among other things that it was granted upon the express condition that the title conveyed thereby should not be subject to alienation or encumbrance either by voluntary conveyance or by judgment, decree or order of any court or subject to taxation of any character, but should remain inalienable and not subject to taxation for the period of twenty years from the date thereof, as provided by act of Congress approved January 18, 1881. (21 Stat. 315.) This act applied only to Winnebagoes.

Taylor continued to own the land until August 8, 1908, when he and his wife made a contract with J. E. Peart, one of the appellees, by which they agreed to convey the land to Peart in fee simple by warranty deed for the sum of $2,400, certain land to be accepted in payment of $550 of such consideration. Time was made the essence of the contract and it was made binding upon the heirs, executors, administrators and assigns of the parties.

September 8, 1908, Peart assigned the contract to William W. Fletcher, also one of the appellees herein. After this contract Taylor and wife took possession of the land taken in part payment of the consideration and Peart took possession of the homestead land and paid the consideration in full.

Taylor and his wife refused to convey the homestead land to either Peart or Fletcher, and the latter instituted suit against them to compel specific performance, which suit resulted in a decree compelling such performance, and a deed was executed to Fletcher by a commissioner appointed by the court.

February 5, 1909, Fletcher conveyed the land by warranty deed to Louis Hemmer, who in April, 1909, denied possession to Taylor, who attempted to remove with his family back on the land, and has since denied possession to him.

June 10, 1909, the United States issued a patent to Taylor which recited that he had established a homestead upon the land in conformity with the act of Congress of July 4, 1884 (hereinafter set out), and that therefore the United States, in consideration of the premises and in accordance with the provisions of said act did and would hold the land (it was described) for the period of twenty-five years in trust for the sole use and benefit of Taylor, or, in case of his decease, of his widow and heirs according to the laws of the State where the land was located, and at the expiration of that period would convey the same by patent to Taylor, or his widow and heirs, in fee discharged of the trust and free of all charge or encumbrances whatsoever. It was declared that the patent was issued in lieu of one containing the twenty year trust clause dated June 6, 1890, which hae been canceled.

In 1894 and in every year since the county treasurer of Moody County (appellee Henderson), its auditor (appellee Hornby), and board of county commissioners have assessed the land for taxation and levied taxes against it and have caused it to be sold and are asserting the right to tax the same. The other appellees assert interest in the land under tax sales.

It will be observed that Taylor made his preliminary homestead entry October 7, 1878, by virtue of the provisions of the act of March 3, 1875. (18 Stat. 420.)* The act gave Taylor, as an Indian having the qualifications it described (that is, who was born in the United States, was twenty-one years of age, the head of a family, and who had abandoned his tribal relations), the benefits of the homestead law and provided that the title acquired by virtue of its provisions should not be subject to alienation or encumbrance, either voluntarily made or through proceedings in court, and should "remain inalienable for the period of five years from the date of the patent issued therefor."

Taylor, however, did not make his final proof until December 11, 1884, when he paid the final fees and received his final receipt and certificate. Prior to such final proof and compliance with the homestead laws Congress passed the act of July 4, 1884 (23 Stat. 96). It provided "that such Indians as now may be located on public lands, or as may, under the direction of the Secretary of the Interior, or otherwise, hereafter so locate, may avail themselves of the provisions of the homestead laws . . . ; but no fees or commissions shall be charged on account of such entries or proofs. All patents therefor shall be of the legal effect and declare that the United States does and will hold the land thus entered for the period of twenty-five years, in trust for the sole use and benefit of the Indian by whom such entry shall have been made, or in case of his decease, of his widow and heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his widow and heirs as aforesaid, in fee, discharged of said trust and free of all charge or encumbrance whatsoever."

Whether the patent to Taylor should have issued under that act and subject to its restriction of twenty-five years, or under the act of 1875 and with a limitation upon alienation of five years, is the controversy in the case. The Government contends for the act of

* SECTION 15. That any Indian born in the United States, who is the head of a family, or who has arrived at the age of twenty-one years, and who has abandoned, or may hereafter abandon, his tribal relations, shall, on making satisfactory proof of such abandonment, under rules to be prescribed by the Secretary of the Interior, be entitled to the benefits of the act entitled "An act to secure homesteads to actual settlers on the public domain," approved May twentieth, eighteen hundred and sixty-two, and the acts amendatory thereof, except that the provisions of the eighth section of the said act shall not be held to apply to entries made under this act: *Provided, however*, That the title to lands acquired by any Indian by virtue hereof shall not be subject to alienation or incumbrance, either by voluntary conveyance or the judgment, decree, or order of any court, and shall be and remain inalienable for a period of five years from the date of the patent issued therefor: * * *

1884 and the contention had the support of the District Court. Appellees contend for the application of the act of 1875 and the Circuit Court of Appeals approved the contention. We put to one side the act of 1881, which prescribes a period of non-alienation of twenty years, as it is conceded that the act applied only to Winnebagoes, and Taylor is a Sioux.

The question in the case, then, is the simple one: Which act applied to and determined Taylor's rights, or, to state the question differently and at the same time give the test of its solution, Was the act of 1875 repealed or superseded by the act of 1884? There are no repealing words in the latter act and if it repealed the other act it must have done so by implication. The implication of such an affect is not favored and the character of the act rejects it. Unquestionably the act of 1884 is the more general and it has criteria of application different from that of the act of 1875. The acts, therefore, have different objects. Under the act of 1884 Indians located on the public lands at the passage of the act or that might under the direction of the Secretary of the Interior, or otherwise, thereafter so locate, might avail themselves of the provisions of the act.

The act of 1875 was more circumscribed. It did not apply to Indians generally but to those of special qualifications, those who had separated themselves from their tribes and the influence of their tribes, who had advanced, therefore, to higher status and were better prepared to manage their affairs than Indians in general. And it might well have been considered that a five-year restriction upon the alienation of their titles, added to their five years' residence, would give them an appreciation of values sufficient to protect them against the improvidence of their race and the imposition of others.

Therefore the acts had no repugnancy but had different fields of application, and this, it might be contended, even considering their future operation. Of this, however, we need not express opinion. The act of 1884 applied to Indians then located on the public lands. Regarding Taylor simply as an Indian those words might be considered to be applicable to him; regarding the purpose of the act, which was to confer a benefit, not confirm one, they did not apply to him or to Indians in his situation, for he, and Indians such as he, were the beneficiaries of the prior act and he and other Indians, it may be—but certainly he—had substantially performed its conditions. What remained to be done, and could have been done before the act of 1884 was passed, was not much more than ceremony.

Nor does the fact that the act of 1884 applied to such Indians as might then be located upon the public lands broaden it so as to include Indians who were proceeding under the act of 1875. The rule is established that under acts of Congress concerning the public lands those are not regarded as such to which a claim has attached, though Congress may, if it be so advised, exercise control over them. (Hasting & Dakota Ry. Co. *v.* Whitney, 132 U. S. 357, 361, 364; Hodges *v.* Colcord, 193 U. S. 192, 196; Bunker Hill Co. *v.* United States, 226 U. S. 548, 550.) Homestead entries under the act of 1875 cannot, therefore, be considered as having been referred to.

Taylor and those in like situation did not need the aid of the act of 1884. Its language was not of confirmation of rights but was permissive and prospective and related to the initiation and acquisition of rights by a different class. And having this definite purpose, it would be difficult to suppose that, besides, rights acquired under prior laws were intended to be limited without reference to such laws. This view makes it unnecessary to inquire whether Taylor's rights had progressed beyond the point of subjection to the power of Congress, he having, as we have said, completed his residence upon the land, and nothing remaining but to make final proof and receive the assurance of his title, which, we have seen, was his situation nearly a year before the passage of the act of 1884.

Congress has undoubtedly by its legislation indicated a policy to protect Indians against a hasty and improvident alienation of their lands, and the Government has cited a number of statutes. But, as we have pointed out, such policy was satisfied by the act of 1875, and we do not think there is anything in the history of the act of 1884 which sustains the contention that it was intended to be an amendment of the act of 1875, or to indicate that the latter act was not sufficiently potent for the purposes of protection. The recommendation of the Interior Department was for the remission of fees and this was responded to, but confined as we have indicated; and the Interior Department considered it to be so confined, for fees were exacted from Taylor upon his final proof, manifesting opinion, within a few months after the passage of the act of 1884, that it did not apply to him. *Decree affirmed.*

Mr. Justice McReynolds took no part in the consideration or decision of this case.

Test: *Clerk Supreme Court, U. S.*

A true copy.

The Cherokee Indian School (Part III)

By Fred A. Odds in the Raleigh Times.

THE Cherokees are more widely scattered in the United States than any other Indians. Mr. Mooney, an ethnological expert of the Government, is the writer's authority for the statement that of all the Indians who have a language, and all of them have something in this line, the Cherokee language is the most difficult to "think," for the reason that it is so involved. In the English language there are the past, present, and future tenses, but in the Cherokee there are the far distant past, the near past, the present, the near future and the very distant future, and so on in other lines. To the Indian there is no difficulty at all about it and when one thinks of this it is clear that your Cherokee is a pretty smart fellow. He speaks in ideographs and he thinks in something even beyond these; in other words he is a sort of fourth-dimension man in the language, to use a mathematical phrase.

The old Indians who know not or will not speak English are called "old smokes." The shamans are generally old men, well over 50, but are sometimes younger. The Indian mother has a sublime contempt for a baby carriage, and she carries her papoose in a carrying pack at her back, precisely like Grandma Eve must have carried little Cain and Abel. Then, too, she is in no hurry to name kiddo, but takes her time; waits maybe until the youngster is a year old. Then suddenly she sees something which strikes her as furnishing a good basis for a name and when she packs kiddo home she says to the fond papa, "I have just found a splendid name for baby. Today, as we were going along, a big turkey gobbler walked into the path, stood straight up, looked at us, and went

'Gobble! Gobble!' Let's name baby Concototagah." Papa nods and grunts, meaning "Yes" both ways, and baby, grown to manhood now, is the champion wrestler of the tribe, Concototagah, which in our English is "Standing Turkey." One day another mama was calmly walking along with kiddo, 14 months old, at her back, when suddenly a careless "old smoke," away up yonder on the brow of a steep farm or grass field almost overhanging the path, let a spade slip out of his hands. Down it fell and stuck in the path right in front of mamma and kiddo. Did mama jump or scream? Not much. Did baby cry or yell? Not at all. All these things come along in the Indian's life. When mama got back she informed the fond papa that she had found an altogether lovely name for kiddo, and so it was then and there bestowed, namely, Kordaske, which Englished is "spade." Yet another mama, out for a 10-mile stroll with her youngster in the pack, her eyes like a couple of bright beads, those wonderful Indian eyes these children have, saw two buzzards sitting high up on a limb, one leaning over in a very confidential attitude as if whispering to the other, and upon her return the dear little angel she was carrying was promptly given the sweet cognomen of "Whispering Buzzard."

Of course the reader has heard of one of the most famous records in the world, the great book, made nearly a thousand years ago in England, known as the "Doomsday Book." The Cherokees here in this reservation of the "Eastern Band," the only United States Indian reservation in the south, have what their superintendent, J. E. Henderson, aptly terms the "Book of Life and Death," in this being set down by three experts, Messrs. Harris, Blythe and French, all the facts about every Indian, showing the percentage of Indian blood down to 1-16, for to that degree they share in the tribal funds and also have part in the holding in common of the lands, 63,000 acres. Before this book was made, in 1907, there was a census made by an expert named Hester, so that Uncle Sam would know everything possible about these, his red children. The writer devoted several hours to studying the great "Book of Life and Death," which is full of very human interest, as the writer will discover.

Uncle Sam keeps close track on all his Indian children or wards, shall we say, and Superintendent Henderson says that of only one who has been here there is not a trace. This is one of the Owl girls, Martha Owl Simpson, and she has been lost for years. After going through the school here she graduated at the great Indian school at Carlisle Pa., went to California, married a white man, dropped out of sight and can't be found anywhere. She has all the rights possessed by any member of this tribe.

These Indians here, known as the "Eastern Band of Cherokee In-

dians of North Carolina," are a regular state corporation, chartered in 1907. They are subject to the state laws, although they do not vote or pay any state tax, they being at no charge to the state whatever. About 25 per cent of them do not speak English, but really all except a few dozen of the very old ones know none of it; these "Old Smokes" living away back in their coves.

The first effort to define the degree of what is known as "blood" was by Harris Roe, a United States expert, and a difficult job he found it. Really it would not have been accomplished but for the versatile Mr. James Blythe, the smartest of all the Cherokees, who did most of it. His memory goes back at least forty years and he used to know every Cherokee by name, not only here but also in the counties of Graham, Cherokee and Macon, this Indian reservation being partly in Swain and partly in Jackson counties. There are 300 Indians in Graham county and the United States maintains a day school for them there near Robbinsville.

The older Indians, the full-bloods, are passing away quite rapidly. They like to live the isolated life, following the customs of their ancestors in the unnumbered centuries, and Mr. Blythe says he really does not think the half-bloods should butt in and talk about wanting the land of the reservation allotted per capita, but that they should respect the wishes of these old Indians, who, after all, are the real representatives of the Cherokees, in customs and in modes of life and thought. So he hopes that the lands will always be held in common and not divided, for if divided much of it would soon pass from the Indians.

As has been stated in this series of stories of Indian life here, these Cherokees have a large fund in Asheville banks and once in a while allotments or payments for this are made to them. When they get this money some of the Cherokees do exactly like white folks do: they blow in the money as fast as they can, spending it in all sorts of ways, buying finery of every kind, riding on the trains and getting hold of whiskey in some instances, but on the other hand a great many put their money to fine uses, buying cattle, farm implements, sewing machines, furnishings for their houses and good clothing, while some deposit it in banks and some, again exactly like white people, hide it.

These Indians, as has been stated, live in separate houses, and these are small and quite alike, sometimes on little elevations near the streams, which are numerous, or at the heads of coves, with beautiful backgrounds of mountain. These Indian have what are known as "clans," some with birds as their emblems, taking from the latter their names, others taking the names of animals. There is one man whose name was Owl who suddenly changed it to Crane, this being entirely permissable since he belongs to the "bird" family. It would not have been proper for him

to have assumed the name of Wolf or Fox or Beaver. There are seven or eight big families with animal names.

An unthinking person who came here would have the idea that the Indian houses are full of relics of the old days, but this is not true, for most of them are gone, nearly all in fact. The writer has secured for the Hall of History one of the antique Cherokee clay cooking pots, the only one now on the reservation, and also two masks used in the "Ghost Dance,"one made out of wood the other out of guord, with plenty of feathers. When these are put on view at Raleigh they will certainly attract attention, as will also an exhibit of modern basketry and pottery. It is always a pleasure to know that North Carolina is a prize winner and Superintendent Henderson gets all puffed up with pride when he tells you his Cherokees here got the gold medal, the highest award, for the splendid basketry they sent to the San Francisco exposition. When the writer puts this on view the down-country basket-makers will certainly open their eyes.

The last of the Cherokee pottery makers died last spring, Eve Catoister and now the work done here is by Catawba Indians, who came to this reservation from South Carolina, where they live as a tribe, though there are only about 150 of them. Mrs. Sampson Owl, the wife of the Cherokee school gardner, is the best artist in pottery now. The Catawba pottery can be easily distinguished from the Cherokee, because it is smooth while that of the Cherokees is rough on the outside.

It has already been stated that the Valentines, of Richmond, Va., opened several Indian mounds here and secured thousands of pre-historic objects. Each year the University of Chicago sends a man here to buy every relic he can get. Another comes as the representative of a museum at Syracuse, N. Y., and he too goes into every cove. These Indians cannot make moccasins and articles of that sort because deer and other game are gone, but nobody can beat them in making baskets.

But here we are, talking about all sorts of other things regarding these interesting people and getting away from the queer things that "Book of Life and Death" which has been referred to and which may be called a census list, though there are no other so strange in North Carolina. It sets out the Indian name and the English name of every man, woman and child, brings in the family connection, so as to show tribal rights, tells the percentage of Indian blood, the place where the person now lives and all sorts of other things.

The Indians called Superintendent Henderson, in Cherokee, "Hensnih." This Cherokee language is a queer one. When two Cherokees meet their voices are dropped low and they speak with parted lips, since their language is the only one that can be spoken without the touching of the lips. So the whole interview or chat

has a remarkable degree of the confidential about it. Mr. James Blythe has been alluded to in these letters. His name in Cherokee is "Nesquanih." The Cherokees call him nothing else. This word means chestnut-bread, for in old times these Indians made bread from chestnuts and they do so to this day. They also beat up hickory-nuts and mix them with corn meal, in balls as large as a grape-fruit, put it away and when they want to use it boil it with water and make a rich and palatable soup. These balls are known as "Canutsih."

By this time the reader will want to be having a look at that roll, the "Book of Life and Death," at which we have been hinting, and so here goes for that. It must be remembered that each person's Indian name is set out, followed by the English one, which sometimes has quite an Indian air also. See if you can keep these names in you memory:

Wee Lee, William Peckerwood; Oostinakee (which means scalp), John Taylor; Tohskihkuihtihhih, Toskigee; Tacayah, Bird; Salolaneeta; Seequiyah, Sevier Skitty; Ahlenih, Jennre Fodder; Wee Lee Westee, Will West; Ootahnetahlih, Jim Tail; Ahnooyawhih, Nancy Standing Deer; Lawyee, Lawyer Feather; Sololawaretih, Fox Squirrel; Eentonanih, Going Snake; Mikeh, Mike walking Stick; Dalkeh, Dorcas Cucumber; Chesquahkahluwah, Bird Chopper Goins; Takahsuntahnah, John Panther; Kehleh, Wild Cat; Konoostahyah, Armstrong Cornsilk; Kunootayoih, Ropetwister; Salkinnih, Sallie Cat; Simmih, James Keg; Skeekee, John Allen; Cuhnahcahtahgah, Standing Turkey; Malee, Mary Bearmeat; Sacaniyah, Blue Owl; Ahneyahlih, Screamer; Amahchunah, Lacey Backwater; Ellihee, Alex Standingwater; Shahlih, Charlie Blackfox; Ahlihtihskih, Runnaway Swimmer; Takinnih, Katie Climbing Bear; Quahtelih, Fidela Shake Ear; Wahyahahnutah, Little Wolf; Solaneetah, Little Squirrel; Cullaquahtakih, Turn-it-Over; Wilsihnih, Wilson Featherhead; Ooyoskahlawteqeskih, Dave Axe; Cuhlareskih, Goliath Little John; Dahnenolih, Smoke.

Crossing the Rubicon

Being a Little Preachment to the Carlisle Students by the Superintendent.

EVERY boy and girl comes to a Rubicon. That Rubicon is Temptation. To pause and dally is to yield.

There was a law in Rome expressly forbidding any of its generals from crossing the boundaries of the Roman province without first obtaining the consent of the Roman Senate. Caesar did not have this consent. A rich country lay beyond the Rubicon. The desire to invade, conquor, and add new laurels to his crown of glory siezed him. Pausing to contemplate the personal reward of such a conquest he forgot his duty to his country and his obligation to maintain the peace and diginity of the Roman people. He plunged, and thus involved his country in a series of foreign wars which resulted finally in the decline and fall of the Roman Empire. And Rome lost her freedom all because one of her generals paused at the brink of the Rubicon and yielded to temptation.

Emerson once said, "We send our sons to college in order that the boys may educate them." That is to say, we are taught by our associates. A youug man may leave school an accomplished scholar and a gentleman, and well preparee to perform his part in the world he is about to enter, or he may come away a blackguard, a spendthrift, a profligate, or a sot. It all depends upon how he employs his time and the company he keeps. No matter where we go or what our surroundings may be we shall encounter temptation—we shall come to a Rubicon. It requires great courage and persistent effort to lead clean, wholesome lives. "He that conquereth himself is greater than he that taketh a city." If we fail to overcome the temptations of youth we shall most likely fail to overcome the greater temptations that beset life's pathway after we leave the paternal roof and the fostering care of sympathetic advisers. Therefore screw your courage to the sticking place and "stick." Begin now.

O. H. LIPPS.

IF I don't trust a man I don't give him responsibility. If I *do* trust him I let him alone.

J. OGDEN ARMOUR